IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1568 OF 2007.

P.M.T.Machine Tool Automatics Pvt.Ltd. ... Petitioner.

Versus.

Krushnakumar Champakalal Shah and others. ... Respondents.

Shri Kiran Bapat with Shri Avinash Fatangare i/by M/s.Desai & Desai Associates for the Petitioner.

Mrs.Anita A.Agarwal for the Respondent No.1.

CORAM : ABHAY S.OKA, J.

DATED : 22nd June, 2007.

P.C.:

1. Rule. The learned Advocate for the 1st Respondent waives service. Considering the facts and circumstances of the case, the service of notice to the other Respondents is not necessary for deciding the controversy involved in this petition.

2. The challenge in this petition under Article 227 of the Constitution of India is to the order dated 8th February 2007 passed by the trial Court in execution application filed by the 1st Respondent-Plaintiff.

3. In a suit filed by the 1st Respondent-Plaintiff there is a money decree passed against the original Defendants Nos.1, 3 and 4. The present Petitioner is the 4th Defendant and the 2nd and 4th Respondents are the first and third Defendants. The operative part of

the decree reads thus:

1) The suit of the Plaintiff is decreed with costs.

2) Defendant No.1, 3 and 4 shall pay the amount of Rs.78,410/- to the Plaintiff.

3) Plaintiff is entitled to recover future interest on the decretal amount at 18% p.a. since from the date of filing the suit till realization of full amount.

4) Defendant shall pay the costs of the suit to the plaintiff, and bear their own.

5) Decree be drawn accordingly."

The said decree was put to execution. In the execution application, an application was filed by the 1st Respondent at Exh.26. In the said application, the 1st Respondent stated that a sum of Rs.90,000/- was already deposited towards part satisfaction of the decree . A prayer was made seeking a direction only against the Petitioner for depositing of the balance decretal amount and for attachment and sale of the machinery of the Petitioner. The said application has been allowed by order dated 8th February 2007.

4. The submission of the Advocate for the Petitioner is that the trial Court has taken an erroneous view of the matter by observing that the decree can be executed against any of the Defendants. It is submitted that the Defendants were not held jointly and severally liable. The learned Advocate for the 1st Respondent supported the impugned order by contending that the original 1st and 3rd Defendants are the Directors of the Petitioner and that is the reason why the 1st Respondent proceeded only against the Petitioner. She submitted that the 1st Respondent was justified in executing the decree only against the Petitioner.

5. The learned trial Judge in paragraph 4 of the impugned order observed that the decree is passed against the original Defendants Nos.1, 3 and 4 and therefore, the 1st Respondent-decree holder has a right to recover the decretal amount from any of the Defendants. Therefore, notwithstanding the admitted position that the Petitioner had deposited a sum of Rs.90,000/- in part satisfaction of the decree, the learned trial Judge has directed the Petitioner to deposit the entire balance decretal amount. A perusal of the decree shows that there is no specific reference in the operative part of the decree to show that the

liability of the Defendants is joint and several. The learned trial Judge has proceeded on the assumption that there is a joint and several decree passed against the Defendants and that is why the learned trial Judge has observed that it is the choice of the 1st Respondent to proceed against any of the judgment-debtors. The trial Judge has made the said observation without considering the legal effect of the decree passed by the Court. Therefore, the direction given by the trial Court to the Petitioner to pay the entire balance amount within a period of 10 days has to be quashed and set aside. The trial Court will have to re-consider the application at Exh.26 and will have to pass an appropriate order consistent with the decree passed in the suit. All questions arising between the parties will have to be decided by the executing Court. It will also be open for the 1st Respondent to proceed against the other Defendants, if so advised.

6. Hence the following order is passed:

(i) The impugned order dated 8th February 2007 is quashed and set aside by restoring the Application at Exh.26 in Regular Darkhast No.5 of 2005. The learned trial Judge will decide the said application afresh as expeditiously as possible and preferably

within a period of three months from the date of receipt of writ of this Court.

(ii) This order will not preclude the 1st Respondent from proceeding against the other Judgment-debtors by making an appropriate application in the pending execution application.

(iii) All contentions of the parties are expressly kept open.

(iv) Writ petition is disposed of in the above terms.

Judge.